

Exhibit 10

In the Matter Of:

NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY

DEPOSITION OF

LLOYD R. SABERSKI, M.D.

January 12, 2017



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NEW ENGLAND COMPOUNDING PHARMACY INC. PRODUCTS LIABILITY
LLOYD R. SABERSKI, M.D. on 01/12/2017

DEPOSITION OF

1 IN THE UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3
4 IN RE NEW ENGLAND COMPOUNDING | MDL NO. 02419
5 PHARMACY, INC. PRODUCTS LIABILITY | DOCKET NO.
6 LITIGATION | 1:13-MD-2419-RWZ

7 THIS DOCUMENT RELATES TO:

8 All Actions

9
10 Deposition of LLOYD R. SABERSKI, M.D.

11 Baltimore, Maryland

12 Thursday, January 12, 2017

13 10:00 a.m.

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20 Reported by: Angela McKinney, Court Reporter
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1 really adequately trained in interventional cardiology
2 doing stents.
3 Q Fair enough. But if they do -- if they
4 regularly do stents and they have experience and
5 training in stents --
6 A Well, if they have training and they have
7 privileges to do stents, of course.
8 Q I guess another way of putting it is what
9 doctors in similar situations would reasonably actually
10 do, right?
11 A Yeah, that sounds fair.
12 (Record read)
13 BY MR. KIRBY:
14 Q So some of the things that can help shape a
15 standard of care or practice in a particular field --
16 and I'm going to run off a couple of things and you let
17 me know if you agree with this -- formal education?
18 A Yes.
19 Q What you were taught?
20 A Yes.
21 Q You learned something from mentors?
22 A Yes.

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1 Q Training?
2 A Yes.
3 Q Discussions with others, other physicians?
4 A Yes.
5 Q Medical conferences?
6 A Yes.
7 Q Interacting -- experience interacting with
8 patients?
9 A Yes.
10 Q Continuing medical education?
11 A Yes.
12 Q And just plain experience in your practice?
13 A Yes.
14 Q Anything else you can think of?
15 A No. I think that covers it.
16 Q And would you agree generally with the
17 principle that sometimes there can be multiple ways to
18 satisfy a standard of care? Let me give you an
19 example. For example, one surgeon might in taking out
20 an appendix use a laparoscopic procedure. They might
21 do it laparoscopically, where someone else does an open
22 procedure. It doesn't mean that one or the other is

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1 necessarily right or wrong, right? You can have
2 multiple ways --
3 A I think that was a bad example. With that
4 said, it really depends on the circumstances. In the
5 most general of perspectives, yes, of course. But many
6 cases, often depending on the circumstances, there is
7 really only one way to do it or two ways to do it.
8 Q Like what?
9 A Well, you know, things --
10 Q It depends on the facts, I guess, right?
11 A Yes. We have no facts here. It depends on
12 the facts. Certainly there could be circumstances, as
13 you laid out, that it could be that way, but I think
14 many circumstances are not so different.
15 Q For example, you like to use triamcinolone?
16 A Yes.
17 Q That doesn't mean that you would say simply
18 because other pain experts prefer something else or
19 don't use triamcinolone that they are breaching the
20 standard of care simply because you like triamcinolone?
21 A Right, as long as what they are using is an
22 appropriately manufactured supplied FDA-approved

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1 product.
2 Q And you would agree the standard of care is
3 prospective; it is not judged retrospectively in
4 hindsight?
5 A Yes.
6 Q So the recalled issue in this case involved
7 three different lots of MPA from NECC, correct?
8 A Yes.
9 Q Do you know the lot numbers?
10 A No.
11 Q 05-21-2012 -- okay. You don't know one way
12 or the other?
13 A No.
14 Q Okay. Do you know how widespread the
15 distribution was for those lots?
16 A No.
17 Q But you would agree it's all across the
18 country?
19 A It was many different states across the
20 country. It was not all 50 states.
21 Q 17,000 doses; does that sound about right?
22 A I've seen that number.



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<p style="text-align: right;">Page 66</p> <p>1 A Yes. I wrote it down this morning just so</p> <p>2 that I'd get it right. The Federal Food, Drug and</p> <p>3 Cosmetic Act of 1938.</p> <p>4 Q Anything else?</p> <p>5 A Well, over the years that law evolved and</p> <p>6 had a number of different codifiers. It was adjusted</p> <p>7 over the years, but that was the principal law that was</p> <p>8 put into place.</p> <p>9 Q When did you look up the Federal Food, Drug</p> <p>10 and Cosmetic Act of 1938?</p> <p>11 A A couple years ago.</p> <p>12 Q Do you know specifically what you would say</p> <p>13 they violated with regards to that Federal Food, Drug</p> <p>14 and Cosmetic Act?</p> <p>15 A Almost everything involving compliance.</p> <p>16 Q Can we agree that NECC's conduct in these</p> <p>17 cases caused injury to the patients?</p> <p>18 A Well, I think their conduct in conjunction</p> <p>19 with the misconduct of the physicians caused injury to</p> <p>20 patients.</p> <p>21 Q Fair enough. At least in part we can</p> <p>22 agree --</p>	<p style="text-align: right;">Page 68</p> <p>1 BY MR. KIRBY:</p> <p>2 Q Do you agree that if proper testing had been</p> <p>3 done, it likely would have detected the contamination?</p> <p>4 MR. MILLER: Object to form.</p> <p>5 A I think you need to speak to somebody who</p> <p>6 does the testing.</p> <p>7 BY MR. KIRBY:</p> <p>8 Q Do you agree that because NECC was licensed</p> <p>9 as a pharmacy in the state of Massachusetts that the</p> <p>10 Massachusetts Board of Pharmacy had the power and</p> <p>11 authority to regulate NECC?</p> <p>12 MR. MILLER: Objection to form.</p> <p>13 A Again, that's a legal question. I don't</p> <p>14 really know the distinction between the federal</p> <p>15 government and the state government in terms of that</p> <p>16 particular question.</p> <p>17 BY MR. KIRBY:</p> <p>18 Q Do you agree that the Massachusetts Board of</p> <p>19 Pharmacy was responsible for enforcing the laws with</p> <p>20 respect to compounding pharmacies within its borders?</p> <p>21 A Again, that's a legal question. I'm a</p> <p>22 physician. My guess is you would think that's the</p>
<p style="text-align: right;">Page 67</p> <p>1 A In part, yes.</p> <p>2 Q You are not going to defend any of NECC's</p> <p>3 actions in these cases?</p> <p>4 A No. But if these products were never</p> <p>5 ordered or never administered, these patients would not</p> <p>6 have a problem.</p> <p>7 Q The standard of care did not require</p> <p>8 Dr. Bhambhani to travel to Boston to NECC's facility to</p> <p>9 inspect them, did it?</p> <p>10 A No.</p> <p>11 Q Have you ever heard a reference to UniClean</p> <p>12 in this litigation?</p> <p>13 A No.</p> <p>14 Q Are you familiar with ARL's role in testing</p> <p>15 the NECC's MPA product here?</p> <p>16 A That's a name I've seen and I know they have</p> <p>17 been involved in testing, but I really don't know much.</p> <p>18 Q Do you believe that whoever tested the</p> <p>19 product for NECC fell below the standard in terms of</p> <p>20 its testing?</p> <p>21 MR. MILLER: Objection to form.</p> <p>22 A No, I'm not an expert in testing.</p>	<p style="text-align: right;">Page 69</p> <p>1 case, but it's a legal question. I can't answer that.</p> <p>2 Q I think you answered a similar question in</p> <p>3 your other Maryland state deposition.</p> <p>4 Would it be the Massachusetts Board of</p> <p>5 Pharmacy's responsibility to ensure that a compounding</p> <p>6 pharmacy obtains an individual prescription for its</p> <p>7 drugs?</p> <p>8 MR. MILLER: Objection to form.</p> <p>9 A Again, I don't know whose responsibility it</p> <p>10 would be in terms of that.</p> <p>11 BY MR. KIRBY:</p> <p>12 Q I think you answered affirmatively in your</p> <p>13 state deposition. If that was the case, would you have</p> <p>14 any reason to change that opinion now?</p> <p>15 A Well, I'm not sure what the basis of my</p> <p>16 opinion was at that time because I really don't know</p> <p>17 the law, that aspect of the law.</p> <p>18 Q Would you agree as a general concept that</p> <p>19 it's reasonable for a health care provider in a state</p> <p>20 to assume that that state regulatory board is actually</p> <p>21 regulating the licensee that it's responsible for?</p> <p>22 MR. MILLER: Objection to form.</p>



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